



KAY IVEY
GOVERNOR


JIM L. RIDLING
COMMISSIONER

STATE OF ALABAMA
DEPARTMENT OF INSURANCE
201 MONROE STREET, SUITE 502
POST OFFICE BOX 303351
MONTGOMERY, ALABAMA 36130-3351
TELEPHONE: (334) 269-3550
FACSIMILE: (334) 241-4192
INTERNET: www.aldoi.gov

DEPUTY COMMISSIONERS
JERRY WORKMAN
MARK FOWLER
CHIEF EXAMINER
RICHARD L. FORD
STATE FIRE MARSHAL
SCOTT F. PILGREEN
GENERAL COUNSEL
REYN NORMAN

BULLETIN NO. 2018-05

TO: All Insurers Writing Health Insurance in Alabama

FROM: Jim L. Ridling
Commissioner of Insurance 

DATE: October 4, 2018

RE: Association Health Plans

EFFECTIVE: Immediate

On June 21, 2018, the Department of Labor published a final rule in the Federal Register titled "Definition of Employer Under Section 3(5) of ERISA-Association Health Plans." 83 Fed. Reg. 28912. The aforementioned final rule provides a change to the standard under ERISA under which employers may join together and be treated as an "employer" to form an Association Health Plan (AHP) and purchase health insurance coverage.

The final rule expands the scope of the type of people who can now participate in AHPs. The final rule permits the inclusion of working owners as employer members of AHP. Although the new rule expands the types of people, the DOL emphasized that existing AHPs would continue to operate and exist in unison with existing rules and regulations.

The following is a summary of federal requirements for the formation of a valid AHP under the recent federal rule:

A substantial business purpose other than the provision of health benefits - Although the provision of health care benefits to its members may be the primary purpose for which an association is formed, it cannot be the only purpose. There must also be at least one substantial business purpose. A substantial business purpose is considered to exist if the entity would be a viable association even in the absence of sponsoring a health plan. Although "business purpose" is not specifically defined in the rule, examples include providing business-related educational

materials or classes to members, setting business standards or practices, or advancing the interests of an industry.

Commonality of interest - Under the new rules, association members do not need to be in the same business or industry. However, they must have at least one of the following in common:

- Trade, industry, line of business or profession;
- Principal place of business in the same state, city or county; or
- Principal place of business in the same metropolitan area (which could include more than one state)

Formal organizational structure - The association must have a governing body and by-laws.

Control by employer members – Participating employers must exercise control of the association and the health plan. Employer members are considered to exercise control when they, for example:

- Nominate and elect directors, officers, trustees or other members of a governing body;
- Have authority to remove such directors, officers, trustees, etc.; or
- Have the authority and opportunity to approve or veto decision affecting plan design, such as changes in coverage, benefits and premiums.

Non-discrimination – AHPs formed under the new rule must comply with federal non-discrimination provisions. The plan cannot exclude an employer from participating, charge different premium rates, or otherwise discriminate against an employer member based on a health condition of one or more employees. Employer members can be treated differently based on:

- Occupation or industry,
- Region where an employer is located,
- Participation in a wellness program, and
- Any other non-health factor.

Rules for “working owners” – Working owners are sole proprietors who do not have any employees. Associations can allow working owners to join, but are not required to do so. The working owner may participate regardless of other options for group coverage (the preliminary rule had a requirement that the working owner could participate in an AHP only as a last resort). In order to qualify, working owners must:

- Work at least each 20 hours per week or 80 hours per month, or
- Have earnings from the business of at least enough to pay the cost of the AHP.

Compliance with market rules – The applicable rules by which the association must abide are determined by the overall size of the association. Thus, an association formed solely of small employers, where the total number of employees (including working owners) exceeds 50, will be

subject to the requirements of the large group market, including the Affordable Care Act and all other applicable federal rules as well as state regulation.

The association must comply with federal requirements concerning MEWAs, including the requirement to file Form M-1 with the DOL at least 30 days prior to the effective date of the AHP, before extending operations to a new state, and annually thereafter.

Alabama has no laws exempting “MEWAs” from regulation thus MEWAs have to fit into one of the established license types, which now also includes captive insurers. The list of established license types include: traditional insurer under Title 27, Chapter 3; HMO under Chapter 21A; Captive insurer under Chapter 31B; Fraternal Benefit Society under Chapter 34; and Health Care Service Plan under Title 10A.

JLR/WR/YH/bc